

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RONDALE DRAIN,

Plaintiff,

v.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

Case No. 2:10-cv-25

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE TERENCE P. KEMP

ORDER

On July 27, 2010, the Magistrate Judge entered a Report and Recommendation recommending that Plaintiff's Statement of Errors be sustained and that this matter be remanded to the Commissioner. (Doc. 16.) No objections have been filed.

Plaintiff asserts that the Commissioner had no basis for determining that he did not meet the requirements of section 12.05(C) of the Listing of Impairments, which requires a finding of disability if a claimant suffers from mental retardation and at least one other severe impairment. The Magistrate Judge found, and this Court agrees, that the Commissioner made a clear error of law by (1) considering matters irrelevant to the question of whether Listing 12.05(C) was satisfied and (2) failing to consider whether the record contains evidence of deficits in the relevant areas of adaptive functioning which would support a diagnosis of mental retardation. Such a diagnosis was made by the medical expert who testified at the administrative hearing, was deferred by another doctor who performed a psychological evaluation of Plaintiff in 2003, and apparently was not accepted by the state agency reviewer. The Magistrate Judge recommended, and the Court agrees, that a remand is needed so that the Commissioner can acknowledge the apparent conflict in the record and analyze whether a fair reading of the record supports a diagnosis of mental retardation.

For the reasons discussed above, the Court hereby **ADOPTS** and **AFFIRMS** the Magistrate Judge's Report and Recommendation. (Doc. 16.) The Court hereby **SUSTAINS** Plaintiff's Statement of Specific Errors and **REMANDS** this matter to the Commissioner for further proceedings pursuant to 42 U.S.C. §405(g).

IT IS SO ORDERED.

8-16-2010
DATED


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE